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DEPARTMENT OF  
WATER RESOURCES

22914 N Shorthorn Ct.  
Sun City West, AZ 85375  
January 15, 2006

Tim Luke  
Water Distribution Section  
322 East Front Street  
P.O.Box 83720  
Boise, ID 83720-0098

RE: Letter to Bob Duke dated September 1, 2005  
Antelope Creek Regulation and Futile Call Determination

Dear Mr. Luke:

In your letter to Bob Duke, you addressed the three conditions that may result in a futile call determination on Antelope Creek. It appears the conditions depend on connectivity to the Big Lost River and a useable quantity of water at the place of use. The guidance does not address time and quantity of water for connectivity as included in the procedure for connectivity above the Mackay Dam.

Our concern is that without time and quantity in determining Antelope Creek connectivity to the Big Lost River, there may be extended delays in futile calls. This could be very destructive to the upper Antelope Creek Valley as there are no wells or storage to supplement the use of surface water as there are in the Big Lost River. It has been well established that ground water pumping has a significant impact on the surface water delivered to the Moore diversion. This was addressed by the Director of the Department of Water Resources in an Order in response for a delivery call by Jensens in June 28, 2004, where it was stated "historic diversions data from 1959 to 1971 and from 1975 to 1983 indicate that prior to and during the development of ground water rights, water was delivered to the Moore diversion throughout the entire irrigation season, Including the months of August, September, and October, even during the low water years of 1959, 1960, 1961, 1977 and 1979."

Applying this historical data to current conditions it is clear that in the absence of ground water diversions there would be sufficient water at the Moore diversion to satisfy Jensens' and other senior surface water rights. Delivery calls would not be necessary and Antelope Creek water rights would not be cut off during periods when Antelope Creek is administered in priority with the Big Lost River.

Regardless of whether ground water diversions directly affect the supply of surface water on Antelope Creek or through delivery calls at the Moore diversion, the 100% loss of surface water diversions is destructive to the economic and environmental quality of the Antelope Valley. Many water users in District 34 have surface and ground water rights that allow recourse for senior water right holders against junior surface and ground water rights. Junior ground water right holders are allowed to pump out of priority

through mitigation. It is unclear if Antelope Creek senior water right holders have any recourse when their surface water diversions are cut 100% by surface water delivery calls while junior water right holders are allowed to pump out of priority pursuant to the District 34 mitigation plan.

The reason for not including time and quantity for connectivity of Antelope Creek to the Big Lost River was made clear in a letter to the Upper Antelope Creek Water Users on September 8, 2005 from Mr. Spackman where he stated, "There are no general provisions decreed in the Snake River Basin Adjudication or any former decrees that specify time periods, flows, or other conditions relative to delivery of water on Antelope Creek, or connectivity between Antelope Creek and the Big Lost River." If it is required that general provisions must be decreed in the Snake River Basin Adjudication Court to change water District 34 guidelines for operation, or if there is the possibility that additional general provisions will be decreed in the Snake River Basin Adjudication Court, we would like the opportunity to have input on how these provisions may affect Antelope Creek water users.

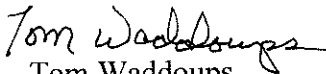
We do appreciate addressing current meter flows on Antelope Creek to establish channel losses. This would be a positive step and to our knowledge is the first time conveyance losses would be measured on the porous reaches of Antelope Creek. Once the channel losses are determined is there a quantitized amount that would be considered excessive conveyance loss that would demonstrate a call for water is futile? Is there a high probability that a usable amount of water at the place of use or zero water at the Big Lost River confluence will determine the conditions for a futile call?

Reviewing the literature indicates there were meetings and good cooperation in developing the conditions for Big Lost River connectivity above the Mackay Dam and other issues in District 34, but for some reason Antelope Creek water users were left out of the process.

We trust that you see our concerns about time and quantity for Antelope Creek connectivity to the Big Lost River when Antelope Creek is administered in priority with the Big Lost River. This may be the only recourse we have to provide some relief from the affects of ground water diversions on the supply of water for satisfying surface water delivery calls.

Thank you for all the help and allowing us to have input as the transformation of water usage occurs in District 34. Your comments and input for our concerns would be very much appreciated.

Sincerely,

  
Tom Waddoups

Cc: Upper Antelope Creek Water Users